



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 29, 1995

Mr. Alberto R. Gonzales  
General Counsel  
Office of the Governor  
State of Texas  
P.O. Box 12428  
Austin, Texas 78711

OR95-1306

Dear Mr. Gonzales:

The Governor's Appointment Office has received three different requests for records concerning applicants for judicial positions in various counties. You have provided much of the information to the requestors; however, you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The requests were assigned ID# 36740, 36905, and 37059.

You ask whether certain information regarding the applicants must be withheld under section 552.101. The information at issue includes answers provided by the applicants regarding any arrests or convictions, answers to certain medical questions, college transcripts provided by the applicants, and information provided by personal references. You also seek clarification regarding previous open records rulings wherein this office concluded that certain criminal history record information obtained from the Department of Public Safety ("DPS") is confidential pursuant to sections 411.083 and 411.084 of the Government Code. See Open Records Letter Nos. 95-1087 (1995), 95-1088 (1995), 95-1089 (1995).

Section 552.101 excepts from disclosure information "considered to be confidential by law, either constitutional, statutory, or by judicial decision." You suggest that disclosure of the requested information would violate the applicants' common-law right to privacy. Information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing and it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

We do not believe that the answers provided by the applicants regarding the existence of any arrests or convictions are highly intimate or embarrassing. Moreover, the public has a legitimate interest in this information. Accordingly, the Office of the Governor may not withhold such information based on section 552.101 of the Government Code in conjunction with common-law privacy. *See generally* Open Records Decision No. 455 (1987).

With respect to the information at issue in Open Records Letter Nos. 95-1087 (1995), 95-1088 (1995), and 95-1089 (1995), criminal history information obtained from DPS is confidential pursuant to statute. Gov't Code §§ 411.083, .084. On the other hand, the information at issue in these requests was provided by the individual applicants and is therefore not governed by the statutory confidentiality provisions found in subchapter F of chapter 411 of the Government Code.

Regarding medical information, common-law privacy does not protect all medically related information. *See* Open Records Decision No. 478 (1987). Individual determinations are required. Open Records Decision No. 370 (1983). This office has determined that the following information is excepted from disclosure by common-law privacy: the fact that a person broke out in hives as a result of severe emotional distress, Open Records Decision No. 470 (1987), the kinds of prescription drugs a person is taking, Open Records Decision No. 455 (1987), and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress, Open Records Decision No. 343 (1982).

We have examined the information submitted to us for review. We believe that the medical information you have marked is excepted from disclosure on the basis of common-law privacy. We agree with your assertion that other medical information provided by one of the applicants is not protected from disclosure under common-law privacy.

Lastly, you suggest that an applicants' college transcripts and information provided by character references is protected by common-law privacy. The information is neither intimate nor embarrassing and the public has a legitimate interest in its release.<sup>1</sup>

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<sup>1</sup>Federal law may prohibit disclosure of the social security numbers included in this request for records. A social security number is excepted from required public disclosure under section 552.101 of the act in conjunction with 1990 amendments to the federal Social Security Act, § 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if it was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See* Open Records Decision No. 622 (1994). Based on the information you have provided, we are unable to determine whether the social security numbers at issue are confidential under this federal statute. We note, however, that section 552.352 of the Open Records Act imposes criminal penalties for the release of confidential information. Therefore, prior to releasing any social security number, the Office of the Governor should ensure that the information is not confidential under this federal statute.

See Open Records Decision Nos. 467 (1987) (college transcripts), 316 (1982) (character references).

In conclusion, you must release all of the requested information with the exception of the medical information you have marked on one of the applications. We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay  
Assistant Attorney General  
Open Records Division

LRD/rho

Ref.: ID#s 36740, 36905, 37059

Enclosures: Marked documents

cc: Mr. James H. Owen  
Life, Stark & Owen, P.C.  
110 East Corsicana Street  
Athens, Texas 75751  
(w/o enclosures)

Mr. David Hajek  
P.O. Box 508  
Seymour, Texas 76380  
(w/o enclosures)

Mr. Gary G. Gorton  
Capitol Services, Inc.  
P.O. Box 1831  
Austin, Texas 78767  
(w/o enclosures)